Supreme Court, U.S.
FILED
JUL 25 1996
CLERK

No. 95-974

In The

Supreme Court of the United States

October Term, 1995

ARIZONANS FOR OFFICIAL ENGLISH and ROBERT D. PARK,

Petitioners,

v.

STATE OF ARIZONA; MARIA-KELLY F. YNIGUEZ; JAIME GUTIERREZ; and ARIZONANS AGAINST CONSTITUTIONAL TAMPERING,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE STATE OF NEW MEXICO AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS MARIA-KELLY F. YNIGUEZ AND ARIZONANS AGAINST CONSTITUTIONAL TAMPERING

TOM UDALL
Attorney General
Counsel of Record
MANUEL TIJERINA
Deputy Attorney General
GERALD T.E. GONZÁLEZ
Director, Civil Division
TANNIS L. FOX
LAURA FASHING
ELIZABETH A. GLENN
WILLIAM S. KELLER
Assistant Attorneys General
Office of the Attorney General of New Mexico
Bataan Memorial Building
Santa Fe, New Mexico 87503
(505) 827-6000

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF THE AMICUS CURIAE 1

SUMMARY OF ARGUMENT..... 2

ARGUMENT 4

I. PETITIONERS' CLAIMED JUSTIFICATIONS FOR THE ENGLISH-ONLY PROVISION MUST BE SCRUTINIZED WITHIN A FACTUAL CONTEXT 4

II. NEW MEXICO'S EXPERIENCE DEMONSTRATES THAT THE ENGLISH-ONLY PROVISION IS UNRELATED TO ANY LEGITIMATE STATE INTEREST 7

A. New Mexico Has a Tradition and Present Day Practice of Acceptance and Protection of the Use of Spanish..... 7

1. Spanish has been used in New Mexico for governmental purposes for nearly four hundred years 7

2. Many laws in New Mexico protect or require the use of the Spanish language..... 14

3. New Mexico state government regularly "speaks" languages other than English during the course of business 20

B. New Mexico's Experience with the Use of Spanish and Other Languages Shows That, as a Practical Matter, an English-Only Provision Bears No Relationship to Any Legitimate State Interest 23

CONCLUSION 29

APPENDIX .....App. 1

TABLE OF AUTHORITIES

Page

Cases

Bond v. Floyd, 385 U.S. 116 (1966) 20

Brown v. Hartlage, 456 U.S. 45 (1982) 20

Buckley v. Valeo, 424 U.S. 1 (1976) 4

Coyle v. Smith, 221 U.S. 559 (1911) 12

Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1978) 6

Plyler v. Doe, 457 U.S. 202 (1982) 4

Priest v. Bd. of Trustees of Las Vegas, 16 N.M. 692, 120 P. 894 (1911), *aff'd*, 232 U.S. 604 (1914) 18

Rodriguez v. La Cueva Ranch Co., 17 N.M. 246, 134 P. 228 (1912) 18

Romer v. Evans, 116 S. Ct. 1620 (1996) 2, 3, 4, 5

Yniguez v. Arizonans for Official English, 69 F.3d 920 (9th Cir. 1995), *cert. granted*, 116 S. Ct. 1316 (1996) 5, 29

Constitutions, Statutes, Regulations and Other Legislative Materials

Ariz. Const. art. XX, ¶ 8..... 12

Ariz. Const. art. XXVIII..... *passim*

N.M. Const. art. VII, § 3.....11, 15

N.M. Const. art. XII, § 8..... 15

N.M. Const. art. XII, § 10.....15, 16

N.M. Const. art. XIX, § 1 15

N.M. Const. art. XX, § 12..... 15

TABLE OF AUTHORITIES – Continued

Page

N.M. Const. art. XXI..... 12

N.M. Const. art. XXI, § 4 16

N.M. Const. art. XXII, § 14 .....13, 15

NMSA 1978, § 1-1-14 (Repl. Pamp. 1995)..... 17

NMSA 1978, § 1-2-1 (Repl. Pamp. 1995)..... 22

NMSA 1978, § 1-2-2 (Repl. Pamp. 1995)..... 22

NMSA 1978, § 1-2-3(B) (Repl. Pamp. 1995) 17

NMSA 1978, § 1-2-3.1 (Repl. Pamp. 1995) 17

NMSA 1978, § 1-2-19(A) (Repl. Pamp. 1995)..... 17

NMSA 1978, § 1-4-5(C)(2) (Repl. Pamp. 1995) 17

NMSA 1978, § 1-4-5.1(H) (Repl. Pamp. 1995)..... 17

NMSA 1978, § 1-8-15 (Repl. Pamp. 1995)..... 17

NMSA 1978, § 1-10-10(A) (Repl. Pamp. 1995)..... 17

NMSA 1978, § 1-11-3(E) (Repl. Pamp. 1995)..... 17

NMSA 1978, § 1-16-5(A) (Repl. Pamp. 1995)..... 17

NMSA 1978, § 1-16-7 (Repl. Pamp. 1995)..... 17

NMSA 1978, § 1-16-13 (Repl. Pamp. 1995)..... 17

NMSA 1978, § 1-22-4(A) (Repl. Pamp. 1995)..... 17

NMSA 1978, § 1-22-5(A) (Repl. Pamp. 1995)..... 17

NMSA 1978, § 3-8-17(A)(1) (Repl. Pamp. 1995) 17

NMSA 1978, § 3-8-22(A) (Repl. Pamp. 1995)..... 17

NMSA 1978, § 10-11-130 (Repl. Pamp. 1995)..... 23

TABLE OF AUTHORITIES – Continued

Page

NMSA 1978, § 10-11-131 (Repl. Pamp. 1995)..... 23
NMSA 1978, § 12-3-3 (Repl. Pamp. 1988)..... 19
NMSA 1978, § 12-3-6 (Repl. Pamp. 1988)..... 19
NMSA 1978, § 12-3-7 (Repl. Pamp. 1988)..... 19
NMSA 1978, § 12-3-11 (Cum. Supp. 1996)..... 19
NMSA 1978, § 14-11-11 (Repl. Pamp. 1995)..... 17
NMSA 1978, § 14-11-12 (Repl. Pamp. 1995)..... 17
NMSA 1978, § 14-11-13 (Repl. Pamp. 1995)..... 18
NMSA 1978, § 17-4-6(A) (Repl. Pamp. 1995)..... 17
NMSA 1978, § 21-13-18.1(A) (Repl. Pamp. 1996)..... 17
NMSA 1978, § 22-18-3(C) (Repl. Pamp. 1993)..... 17
NMSA 1978, § 22-23-3 (Repl. Pamp. 1993)..... 16
NMSA 1978, § 22-23-6 (Repl. Pamp. 1993)..... 16
NMSA 1978, § 27-6-17(A)(1) (Repl. Pamp. 1995)..... 18
NMSA 1978, § 28-1-4(B) (Repl. Pamp. 1996)..... 22
NMSA 1978, § 39-5-1 (Repl. Pamp. 1991)..... 17
NMSA 1978, § 47-6-17(D) (Repl. Pamp. 1995)..... 17
NMSA 1978, § 49-2-4..... 17
NMSA 1978, § 49-2-18..... 17
NMSA 1978, § 59A-11-6(C) (Repl. Pamp. 1995)..... 18
NMSA 1978, § 60-6A-30 (Repl. Pamp. 1994)..... 19
NMSA 1978, § 60-13-16(B) (Repl. Pamp. 1989)..... 18
NMSA 1978, § 69-36-7(K)(3) (Repl. Pamp. 1993)..17, 18

TABLE OF AUTHORITIES – Continued

Page

NMSA 1978, § 73-8-3..... 17
NMSA 1978, § 73-9-3..... 17
NMSA 1978, § 73-10-4..... 17
NMSA 1978, § 73-11-14..... 17
NMSA 1978, § 73-11-29..... 17
NMSA 1978, § 73-14-3(F)..... 17
NMSA 1978, § 73-18-20(C)..... 17
NMSA 1978, § 74-9-22(C) (Repl. Pamp. 1993)..... 17
NMSA 1978, § 77-2-7(A) (Cum. Supp. 1995)..... 22
NMSA 1978, § 77-9-20(A) (Repl. Pamp. 1993)..... 17
NMSA 1978, § 77-12-4 (Repl. Pamp. 1993)..... 17
NMSA 1978, § 77-14-10 (Repl. Pamp. 1993)..... 17
19 NMAC 10.2.903.C..... 18
1967 N.M. Laws 16, § 230..... 16
1969 N.M. Laws 240, §§ 101, 164, 213, 378..... 16
H.J. Res. 7, 38th N.M. Legis., 1st Sess. (1987)..... 19
H.J. Mem. 16, "Supporting Language Rights in America," 39th N.M. Legis., 1st Sess. (1989)..... 19

OTHER AUTHORITIES

17 Hubert Howe Bancroft, *The Works of Hubert Howe Bancroft: History of Arizona and New Mexico, 1530-1888* (1889).....9, 10
Herbert E. Bolton, *Coronado, Knight of the Pueblos and Plains* (1949)..... 7

TABLE OF AUTHORITIES – Continued

Page

Bureau of the Census, U.S. Dept. of Commerce, *State Population Projections, Series A* (Mar. 1994) 27

Lyle Campbell & Marianne Mithun, *The Languages of Native America* (1979) 7

Lynne M. Casper, U.S. Dept. of Commerce, *Projections of the Voting-Age Population, for States: November 1994* (May 1994) 27

Malcolm Ebright, *Land Grants and Lawsuits in Northern New Mexico* (1994) 17, 18

Jurig Fedynskyj, *State Session Laws in Non-English Languages: A Chapter of American Legal History,* 46 Ind. L.J. 463 (1971) 9, 13

E.B. Fincher, *The Mexican American: Spanish Americans as a Political Factor in New Mexico 1912-1950* (1950) 27

F. Chris Garcia, *New Mexico: The Setting, in New Mexico Government* 1 (Paul L. Hain *et al.* eds., 3d ed. 1994) 28

F. Chris Garcia & Rudolf O. de la Garza, *The Chicano Political Experience: Three Perspectives* (1977) 27

Nancie L. González, *The Spanish Americans of New Mexico* (2d ed. 1969) 28

Eduardo Hernandez-Chavez, *Language Policy in the United States, in Linguistic Human Rights: Overcoming Linguistic Discrimination* 141 (1995) 9, 13, 16

Jack E. Holmes, *Politics in New Mexico* (1967) 9, 11, 12, 27

TABLE OF AUTHORITIES – Continued

Page

Heinz Kloss, *The American Bilingual Tradition* (1972) 8, 10, 13, 14, 15

D.W. Meinig, *Southwest: Three Peoples in Geographical Change, 1600-1970* (1971) 8, 13, 27

Doris L. Meyer, *The Language Issue in New Mexico, 1880-1900: Mexican-American Resistance Against Cultural Erosion,* 4 Bilingual Review/Revista Bilingüe 99 (1980) 10, 13, 14

Robert Milk, *The Issue of Language in Education in Territorial New Mexico,* 7 Bilingual Review/ Revista Bilingüe 212 (1977) 8, 10, 13, 14

Office of the New Mexico Secretary of State, *New Mexico Blue Book 1995-96* (1995) 19, 27

Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English,* 77 Minn. L. Rev. 269 (1992) 8, 9, 10, 12

Proceedings of the Constitutional Convention of the Proposed State of New Mexico (Press of the Morning Journal 1910) 12

Marc Simmons, *New Mexico: A Bicentennial History* (1977) 10, 11

Ithiel de Sola Pool, *Plural Society in the Southwest: A Comparative Perspective, in Plural Society in the Southwest* 321 (Edward H. Spicer & Raymond H. Thompson eds., 1972) 29

Edward H. Spicer, *Cycles of Conquest: The Impact of Spain, Mexico, and the United States on the Indians of the Southwest, 1533-1960* (1st ed. 4th prtg. 1972) 8, 9, 14

TABLE OF AUTHORITIES – Continued

Page

1 Ralph Emerson Twitchell, *The Leading Facts of New Mexican History* 53-352 (1911) 7

Maurilio E. Vigil, *The Hispanics of New Mexico: Essays on History and Culture* (1985) 27

Maurilio E. Vigil *et al.*, *New Mexico Government and Politics* (1995) 27

1970 Census of Population, *Detailed Characteristics, New Mexico*, Table 142 (June 1972) 25

1970 Census of Population, *General Social and Economic Characteristics, New Mexico*, Table 49 (Dec. 1971) 25

1980 Census of Population, *General Social and Economic Characteristics, New Mexico*, Table 63 (June 1983) 25

1990 Census of Population, *Social and Economic Characteristics, Arizona*, Table 32 (Sept. 1993) 24

1990 Census of Population, *Social and Economic Characteristics, New Mexico*, Table 32 (Sept. 1993) 1, 24, 25

INTEREST OF THE AMICUS CURIAE

The State of New Mexico is home to a substantial number of people who speak a language other than English. In 1990, 27.9% of the state's population, or over 388,000 people, spoke Spanish in their homes, and 5.7% of the population, or over 79,000 people, spoke a Native American language at home. 1990 Census of Population, *Social and Economic Characteristics, New Mexico*, Table 32 (Sept. 1993).[1] Four percent of the population, or approximately 56,000 people, did not speak English or did not speak it well. *Id.*

Because substantial numbers of New Mexican citizens speak languages other than English, the state government of New Mexico conducts its business in many and varied circumstances in languages other than English. Spanish is the other language used most frequently, although it is not the only other language used.

If article XXVIII of Arizona's Constitution ("Article 28", or the "English-only provision") is permissible, similar laws could be enacted by the federal government or by state or local government in New Mexico. Such laws would severely hamper the operation of government in New Mexico: state government uses languages other than English because this is the most effective and efficient way to carry out the state's statutory responsibilities and to serve the public.

Equally important, an English-only rule would undermine New Mexican citizens' access to government.

---

[1] The U.S. census counts persons five years and older with respect to its information on language.

It would erect a high barrier to government's broad array of services for individuals not proficient in English as well as to citizens' First Amendment right to petition the government for redress of grievances. Such a law would also prevent them from securing access in the future through the political process.

> [L]aws singling out a certain class of citizens for disfavored legal status or general hardships are rare. A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense.

Romer v. Evans, 116 S. Ct. 1620, 1628 (1996). While individuals who speak a language other than English have no general right to require the government to "speak" to them in their language, this class of citizens should not be singled out and prevented altogether from accessing government in their language.

The State of New Mexico has a strong interest in ensuring that its government operations continue unhampered and that its citizens who are not proficient in English are not frozen out of the workings of government by an English-only law.

SUMMARY OF ARGUMENT

There is no rational relationship between Article 28 and the state interests petitioners contend are at stake. Petitioners claim that prohibiting government's use of

languages other than English will further the state's interests in promoting a common language, efficient and effective government, political unity and stability, and public confidence in government. The record, however, is devoid of facts that support this claim. Petitioners' bare allegation is "divorced from any factual context from which [one] could discern a relationship to legitimate state interests . . . ." *Romer*, 116 S. Ct. at 1629.

The experience of New Mexico, on the other hand, provides the Court with a factual context by which to gauge petitioners' claims. New Mexico government has a tradition and present day practice of acceptance and protection of the use of Spanish. Many people in New Mexico speak Spanish as well as other languages other than English, a greater percentage of the population, in fact, than in Arizona.

Though a substantial number of people in New Mexico continues to speak a language other than English, only a small minority does not speak English or does not speak it well. An English-only provision is therefore not rationally related to the promotion of the legitimate state goal of a common language.

New Mexico state government frequently conducts business in languages other than English. This practice does not interfere with the workings of government, but allows government to carry out its responsibilities more efficiently and effectively.

Finally, New Mexico's support for the use of other languages has not resulted in political disunity or a lack of public confidence in government. To the contrary, New Mexico is a cohesive political entity that flourishes with

the diversity of its languages and cultures. Communicating to citizens in their own languages makes for more responsive government and thereby increases public confidence in government.

The experience of New Mexico is that language diversity is positive for the political entity. An English-only regime cannot be justified on any of the grounds offered by petitioners.

ARGUMENT

I. PETITIONERS' CLAIMED JUSTIFICATIONS FOR THE ENGLISH-ONLY PROVISION MUST BE SCRUTINIZED WITHIN A FACTUAL CONTEXT

The English-only provision should be subjected to a heightened level of scrutiny by the Court, whether analyzed under First Amendment principles of free speech or under equal protection principles. *See, e.g., Buckley v. Valeo,* 424 U.S. 1, 16 (1976) ("laws directed at speech are subject to exacting scrutiny under the First Amendment); *Plyler v. Doe,* 457 U.S. 202, 216-17 (1982) (strict scrutiny applied under Equal Protection Clause when a classification is suspect or when a fundamental right is affected). Petitioners, on the other hand, argue that the standard for review is whether the English-only provision is arbitrary. Pet. Brief at 20.

Whatever level of scrutiny is applied, the Court's recent decision in *Romer v. Evans* makes clear that the Court – even under the most deferential standard – will

scrutinize the "factual context" that supports the justifications for a state law that singles out a certain class of citizens for disfavored treatment. *Romer,* 116 S. Ct. at 1627, 1628-29. When the Court reviews a law such as Article 28 – which singles out non-English speakers, prohibits them from seeking specific protection from the law, and raises the "inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected" – the Court will look to whether the law has "any identifiable legitimate purpose or discrete objective" or whether the law is "divorced from any factual context from which [the Court] could discern a relationship to legitimate state interests . . . ." *Id.* at 1628, 1629.

It is not sufficient, therefore, that petitioners simply put forth what all can agree is a legitimate state interest, such as the promotion of democracy, and claim – in the abstract – that prohibiting the use of languages other than English in government operations furthers that interest. There must be a *rational and factually-based relationship* between the English-only provision and the state interests proffered by petitioners.

Petitioners' claimed justifications for the English-only provision are that it would: (1) promote a common language, (2) promote efficiency and effectiveness in government, (3) promote political unity and stability, and (4) prevent a "garbled and distorted" message from government so that the public has confidence in government. *See, e.g.,* Pet. Brief at 15, 35-37, 39.

The record, as the Ninth Circuit found, is devoid of *any* evidence that the English-only provision would in fact further any of these interests. *Yniguez v. Arizonans for*

Official English, 69 F.3d 920, 945 (9th Cir. 1995) ("Arizonans for Official English offer us nothing more than 'assertion and conjecture to support its claim' that Article XXVIII's restrictions on speech would serve the alleged state interests") (quoting *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 841 (1978)), *cert. granted*, 116 S. Ct. 1316 (1996). There is nothing in petitioners' brief that undermines the Ninth Circuit's conclusion.[2]

[2] The one fact from the record upon which petitioners rely is that Ms. Yniguez' supervisor did not understand the settlement agreements that Ms. Yniguez drafted in Spanish. Pet. Brief at 35-36. This single fact, in petitioners' view, supports the claimed justification relating to government efficiency and effectiveness. *Id.* at 36.

Petitioners, however, fail to mention that Ms. Yniguez' files contained an English translation of the settlement agreements. Yniguez Opp. to Cert. Pet., App. at 4. Indeed, petitioners make no claim that the supervisor's inability to read the Spanish documents interfered with the Arizona Department of Administration's operations. Petitioners are simply offended by the notion that the supervisor could not have understood the Spanish documents without the translations.

In any event, the State of Arizona acknowledged that Ms. Yniguez' use of Spanish contributed to the efficient operation of state government and that, in general, the use of a language other than English by state government employees to communicate with citizens who are not proficient in English enhances the efficient operation and administration of Arizona government. *Id.*, App. at 8 (Stmnt. of Stip. Facts, ¶¶ 15-17).

II. NEW MEXICO'S EXPERIENCE DEMONSTRATES THAT THE ENGLISH-ONLY PROVISION IS UNRELATED TO ANY LEGITIMATE STATE INTEREST

Although petitioners present nothing by way of concrete example, New Mexico's experience with multilingualism and multiculturalism provides the Court with a factual context by which to gauge whether an English-only law would promote the state interests petitioners claim are at stake.

A. New Mexico Has a Tradition and Present Day Practice of Acceptance and Protection of the Use of Spanish

1. Spanish has been used in New Mexico for governmental purposes for nearly four hundred years

New Mexico was first fully explored by the Spanish in 1540 by Francisco Vásquez Coronado. *See* Herbert E. Bolton, *Coronado, Knight of the Pueblos and Plains* 112-354 (1949). At that time, the area's indigenous inhabitants spoke dialects from many linguistic branches, including Hopi, Keres, Piro, Tewa, Tiwa, Tompiro, Towa, Zuni and Athabascan (Navajo and Apache) tongues. Lyle Campbell & Marianne Mithun, *The Languages of Native America* 390-428, 874-76 (1979). After eight previous explorations by the Spanish, the first permanent Spanish settlement was established under Juan de Oñate in 1598. *See* Ralph Emerson Twitchell, *The Leading Facts of New Mexican History* 53-352 (1911). The Spanish continued to settle the

area during the 1600's. Edward H. Spicer, *Cycles of Conquest: The Impact of Spain, Mexico, and the United States on the Indians of the Southwest, 1533-1960*, at 284-92 (1st ed. 4th prtg. 1972). In 1680, the Pueblo Indians rebelled and forced the Spanish out, but between 1692 and 1696, the Spanish reconquered. Heinz Kloss, *The American Bilingual Tradition* 125 (1972). Spanish became the language through which Native American tribes of different languages spoke to one another. Spicer, *supra*, at 435.

The first Anglo-Americans (persons of European non-Hispanic descent, commonly abbreviated in the southwestern United States as "Anglos") came to New Mexico in 1804. Kloss, *supra*, at 125. English usage increased as a result of greater commerce and the opening of the Santa Fe Trail in 1821. D.W. Meinig, *Southwest: Three Peoples in Geographical Change, 1600-1970*, at 17-19 (1971). In 1846, the United States acquired New Mexico's territory by military force. Kloss, *supra*, at 125. At that time, there were only about 100 English speaking settlers in the territory. Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 Minn. L. Rev. 269, 320 (1992). The United States formally annexed the area which includes present day New Mexico in 1848 through the Treaty of Guadalupe Hidalgo; in a later act, Congress promised to grant equal political rights to the inhabitants of the territory "as soon as possible." Kloss, *supra*, at 125, 127.

In 1850, New Mexico's population of approximately 50,000 was overwhelmingly Spanish speaking. Robert Milk, *The Issue of Language in Education in Territorial New Mexico*, 7 Bilingual Review/Revista Bilingüe 212, 214

(1977). During the territorial years, the lawmaking process was American and Anglo-Saxon, a majority of legislators was Hispanic, and the leaders of both political parties included Anglo-American and Hispanic representatives. Jack E. Holmes, *Politics in New Mexico* 30 (1967). In 1864, for example, thirty-one of thirty-three members of the New Mexico territorial legislature were Hispanic. 17 Hubert Howe Bancroft, *The Works of Hubert Howe Bancroft: History of Arizona and New Mexico, 1530-1888*, at 706 (1889). In 1887, nineteen of thirty-three legislators were Hispanic. *Id.* at 709; *see also id.* at 706-07 (noting the "preponderance of Spanish names" in the New Mexican legislative assemblies between 1863 and 1887) & n.3.

Use of English in New Mexico for governmental purposes began when New Mexico became a United States territory, although Spanish continued as the dominant language. Spicer, *supra*, at 436. The laws of the territory were published on October 7, 1846 in a bilingual edition, with Spanish on one side of the page and English on the other. Perea, *supra*, at 320. Until 1870, New Mexico territorial laws were generally enacted in Spanish, translated into English and published in a bilingual volume. Jurig Fedynskyj, *State Session Laws in Non-English Languages: A Chapter of American Legal History*, 46 Ind. L.J. 463, 471 (1971); Perea, *supra*, at 320. After 1870, laws were enacted in English and, along with other official documents, translated in a separate volume into Spanish. Fedynskyj, *supra*, at 471; Perea, *supra*, at 321. Until the late 1880's, all business in the New Mexico territorial legislature was transacted in Spanish. Bancroft, *supra*, at 708-09; Eduardo Hernandez-Chavez, *Language Policy in the United States, in*

Linguistic Human Rights: Overcoming Linguistic Discrimination 141, 147 (1995).

The 1880's saw a great influx of Anglos to the region as a result of economic expansion and the arrival of the railroad. Doris L. Meyer, *The Language Issue in New Mexico, 1880-1900: Mexican-American Resistance Against Cultural Erosion*, 4 Bilingual Review/Revista Bilingüe 99, 100 (1980); Milk, *supra*, at 216. By 1885, there were an estimated 100,000 Spanish speaking inhabitants and 40,000 Anglo-Americans. Milk, *supra*, at 214.

Soon after the United States acquired New Mexico, efforts to secure statehood began. Bancroft, *supra*, at 720; Kloss, *supra*, at 127. Congress had a number of objections to New Mexico's entrance; principal among them was the predominance of citizens of Spanish descent "whose language was foreign." Bancroft, *supra*, at 720-21; Kloss, *supra*, at 127-28; Perea, *supra*, at 322 & n.295. Congress feared that New Mexico's citizens would not be sufficiently patriotic or respectful of principles of American government. Bancroft, *supra*, at 721; Marc Simmons, *New Mexico: A Bicentennial History* 133 (1977). As a result, for more than sixty years, the efforts of New Mexico to become a state were "checkmated." Simmons, *supra*, at 133.[3]

---

[3] In 1889, during the Spanish-American War, President McKinley sent a telegram to the governor of New Mexico, Miguel A. Otero, Jr., requesting recruits. Simmons, *supra*, at 165. The Governor "knew he was on the spot," understanding that many eastern newspapers doubted New Mexico's loyalty to the United States and had written inflammatory articles that New Mexico was filled with Spanish sympathizers. *Id.*

Congress' fears about language began to subside with passage of the Fergusson Act in 1898, which established the foundation for a public school system in the territory. *Id.* at 166. In response to political pressure, Congress passed the Enabling Act of 1910, allowing New Mexico and Arizona to hold constitutional conventions and setting forth requirements to enter the union. *Id.* New Mexico convened a constitutional convention that same year. One half of the seventy Republican delegates to the one hundred member convention were Spanish American. Holmes, *supra*, at 40.

As a result of that representation, the New Mexico Constitution contained important guarantees of the rights of Spanish speakers and persons of Spanish descent. These rights included the right of all citizens to vote, hold office and sit on juries without regard to "religion, race, language or color, or inability to speak, read or write the English or Spanish languages . . . ." N.M. Const. art. VII, § 3.[4] At the end of the convention, Delegate Montoya offered the following:

> In the name of the Spanish-American members of the Convention, I wish to say, that all delegates here have, as one man, helped to safeguard the

---

The Governor issued a call to every town in the territory. *Id.* The response was substantial, from both Hispanic and Anglo citizens, such that Theodore Roosevelt would later claim that half the officers and men in his Rough Riders Regiment came from New Mexico. *Id.*

[4] Other provisions in the New Mexico Constitution which protect the use of Spanish or prohibit discrimination against persons of Spanish descent are discussed *infra*. The pertinent parts of these six constitutional provisions are set forth in the Appendix.

> rights of the two hundred thousand people of that blood in this Territory, as loyal a people as is to be found in any State of the Union.

Proceedings of the Constitutional Convention of the Proposed State of New Mexico 289 (Press of the Morning Journal 1910).

Congress' concern, however, about New Mexico's inhabitants and their use of Spanish had not altogether disappeared. In the Enabling Act, Congress required that all state officers and members of the legislature "read, write, speak, and understand the English language sufficiently well to conduct the duties of the office without the aid of an interpreter . . . ." Holmes, *supra*, at 52. The drafters of the New Mexico Constitution set forth (in article XXI) the English language qualification to satisfy Congress' requirement despite the inconsistency with article VII's right to hold office without regard to the ability to speak, read or write in English or Spanish. Holmes, *supra*, at 52.

In 1911, this Court held that Congress could not place conditions on newly admitted states which deprived them of any "powers of sovereignty and jurisdiction which pertain[ed] to the original States." *Coyle v. Smith*, 221 U.S. 559, 573 (1911). In turn, Congress removed the English language restriction in the Enabling Act, and the New Mexico legislature proposed an amendment removing it from the constitution. Holmes, *supra*, at 54-55. The state constitution, including the amendment removing the English language qualification for office holders, was adopted in 1911.[5] Holmes, *supra*, at 54-55; Perea, *supra*, at

---

[5] Arizona retained the English language qualification in its constitution. Ariz. Const. art. XX, ¶ 8.

322. On January 6, 1912, New Mexico became the forty-seventh state.

The New Mexico Constitution guaranteed that all laws would be published in Spanish for twenty years and thereafter in Spanish at the discretion of the legislature. N.M. Const. art. XXII, § 14. The twenty year limit was extended by ten years in 1931 and again in 1943, although the last annual edition of the state laws in Spanish was published in 1949. Kloss, *supra*, at 130-31; Fedynskyj, *supra*, at 471.

With an increasing number of Anglo-Americans moving into the state, Spanish inevitably gave way to English as the dominant language. Hernandez-Chavez, *supra*, at 147. Spanish was not retained as the official language of the legislature, and the legislature employed a permanent interpreter for the last time in 1935 although nineteen of the forty-two representatives had Spanish surnames. Kloss, *supra*, at 131.[6]

---

[6] While New Mexico has a history of bilingualism, the coexistence of three major ethnic groups and their linguistic differences has not been without tension. Meinig, *supra*, at 62-64, 90, 92. Language policy in education in territorial New Mexico and into statehood represents one such area of tension between Spanish speakers and Anglo-Americans. *See generally* Kloss, *supra*, at 134-39; Meyer, *supra*, at 100-04; Milk, *supra*, at 212-19.

In 1856, the territorial governor introduced a law to establish a public education system in New Mexico. Milk, *supra*, at 212. The law was defeated overwhelmingly, 5016 votes to 37. *Id.* This vote was viewed by Anglos as evidence that the Spanish speaking population was completely hostile to education. *Id.* at 212, 215.

From researching Spanish language newspapers of the day, however, some later scholars believe that Spanish speaking New Mexicans saw public education, in which English

2. Many laws in New Mexico protect or require the use of the Spanish language

New Mexico has not only a historical but also a present day practice of protecting or requiring the use of

---

inevitably would be the language of instruction, as an attempt by Anglo-Americans to dominate and overcome their language and culture. Milk, *supra*, at 214.

In 1891, a public school law was passed; an administrative ruling that same year from the Superintendent of Public Instruction called for English to be the sole language of instruction. *Id.* Again, the law was opposed by some Spanish newspapers – even though they recognized that knowledge of English was essential for practical purposes – because they believed it would lead to an erosion of the Spanish language and cultural values. Meyer, *supra*, at 100; Milk, *supra*, at 216.

> What seemed to upset the editors of the newspapers . . . was the tendency for the language issue to be seen in an either-or framework – either Spanish had to be totally abandoned in the schools or English would never be adequately learned by the children from Spanish-speaking homes.

Milk, *supra*, at 216. The editors' concern was founded: between 1900 and 1910 there was "almost a complete removal of Spanish from the schools." Kloss, *supra*, at 135.

Education was used by the federal government to remove Native American languages. Native American children, including those in New Mexico, were separated from their parents, sometimes by force, and taken to federal boarding schools where they were required to speak only English. Spicer, *supra*, at 439. An 1887 policy of the Commissioner of Indian Affairs stated: " 'It is . . . believed that teaching an Indian youth in his own barbarous dialect is a positive detriment to him. The impracticability, if not impossibility of civilizing Indians of this country in any other tongue than our own would seem obvious.' " *Id.*

Spanish through its laws.[7] The New Mexico Constitution contains six provisions which protect or require the use of Spanish or protect Spanish speaking people or people of Spanish descent from discrimination. *See* N.M. Const. art. VII, § 3; art. XII, §§ 8, 10; art. XIX, § 1; art. XX, § 12; art. XXII, § 14 (set forth in the Appendix). Perhaps most important is the provision, referred to previously, providing that:

> The right of any citizen of the state to vote, hold office or sit upon juries, shall never be restricted, abridged or impaired on account of religion, race, *language* or color, *or inability to speak, read or write the English or Spanish languages* . . . .

Id. art. VII, § 3 (emphasis added).

The constitution required the ballots for ratification to be printed in both English and Spanish. *Id.* art. XXII, § 14. To this day, the constitution requires that any proposed constitutional amendment be published in a newspaper in every county and, if a Spanish language newspaper is available, the proposed amendment must be published in both English and Spanish. *Id.* art. XIX, § 1.

The state constitution has certain protections for Spanish speaking students: it requires the legislature to provide training for teachers so that they may become proficient in both English and Spanish, *id.* art. XII, § 8, and protects the rights of children of Spanish descent to attend any public school and "forever enjoy perfect

---

[7] *See* Kloss, *supra*, at 129-39, for a historical discussion of New Mexico laws in which Spanish was required or permitted.

equality with other children in all public schools," *id.* § 10.[8]

In addition to the constitutional protections, New Mexico law has a history of providing election information and notices in Spanish. *See* Hernandez-Chavez, *supra*, at 151. Many of the laws relating to bilingual election requirements were enacted in 1969, prior to enactment of bilingual requirements under the 1975 Amendments to the Federal Voting Rights Act. *See, e.g.*, 1969 N.M. Laws 240, §§ 101, 164, 213, 378. These laws included provisions for publication of election proclamations in Spanish as well as English. *See also* 1967 N.M. Laws 16, § 230 (providing that "[a]ll publications, ballots, ballot labels, and instructions for a [school district] bond election shall be printed in English and may also be printed in Spanish"). Currently, New Mexico has at least nineteen statutory provisions that require election materials or information to be printed in both English and

[8] The constitution reflects the historical tension between Spanish speakers and Anglos in the area of education, providing that instruction in public schools "shall always be conducted in English." N.M. Const. art. XXI, § 4.

New Mexico's Bilingual Multicultural Education Act, however, requires that state funded bilingual education programs use "two languages as mediums of instruction." NMSA 1978, § 22-23-6 (Repl. Pamp. 1993). The purposes of the act are to ensure equal education opportunities in New Mexico, to improve students' linguistic skills, to incorporate students' linguistic and cultural backgrounds into the curriculum, and to "teach[ ] students to appreciate the value and beauty of different languages and cultures." *Id.* § 22-23-3.

Spanish (including those provisions enacted to comply with the federal voting laws).[9]

New Mexico laws regularly promote or require the use of Spanish in the publication of legal notices. There are at least eighteen statutes currently in effect which either require or permit publication of notices in Spanish in addition to English.[10] These statutory provisions range from requiring local governments to publish notice of their proceedings in English or Spanish, or both, depending on the portion of the local population who speaks English, NMSA 1978, § 14-11-11 (Repl. Pamp. 1995), to requiring that notices of judicial sales be published in Spanish or English, whichever will give the most extensive notice in the county where the sale will take place, *id.* § 39-5-1 (Repl. Pamp. 1991),[11] to providing that applicants

[9] *See* NMSA 1978, §§ 1-1-14, 1-2-3(B), 1-2-3.1, 1-2-19(A), 1-4-5(C)(2), 1-4-5.1(H), 1-8-15, 1-10-10(A), 1-11-3(E), 1-16-5(A), 1-16-7, 1-16-13, 1-22-4(A), 1-22-5(A) (Repl. Pamp. 1995), 3-8-17(A)(1), 3-8-22(A) (Repl. Pamp. 1995), 21-13-18.1(A) (Repl. Pamp. 1996), 22-18-3(C) (Repl. Pamp. 1993), 49-2-4.

[10] *See* NMSA 1978, §§ 14-11-11, 14-11-12 (Repl. Pamp. 1995), 17-4-6(A) (Repl. Pamp. 1995), 39-5-1 (Repl. Pamp. 1991), 47-6-17(D) (Repl. Pamp. 1995), 49-2-18, 69-36-7(K)(3) (Repl. Pamp. 1993), 73-8-3, 73-9-3, 73-10-4, 73-11-14, 73-11-29, 73-14-3(F), 73-18-20(C), 74-9-22(C) (Repl. Pamp. 1993), 77-9-20(A) (Repl. Pamp. 1993), 77-12-4 (Repl. Pamp. 1993), 77-14-10 (Repl. Pamp. 1993).

[11] During the nineteenth century, lack of notice of judicial sales in Spanish had severe consequences for certain Spanish speaking land owners in New Mexico. Many Hispanic families claimed land grants from Spain and Mexico. *See* Malcolm Ebright, *Land Grants and Lawsuits in Northern New Mexico* 22-28 (1994). In one fraud scheme, selected claimants, backed by speculators, would sue to partition their grants of land. *Id.* at

for mining permits publish notice of their applications in English and Spanish, *id.* § 69-36-7(K)(3) (Repl. Pamp. 1993); 19 NMAC 10.2.903.C. State statute designates seven newspapers as official Spanish language newspapers for publication of notices in Spanish. NMSA 1978, § 14-11-13 (Repl. Pamp. 1995).

Two licensing statutes permit applicants to take their licensing examinations in Spanish. NMSA 1978, § 59A-11-6(C) (Repl. Pamp. 1995) (examination for insurance agents); *id.* § 60-13-16(B) (Repl. Pamp. 1989) (examination for construction industries).

Spanish speaking consumers have certain protections: utility companies must deliver notices in English and Spanish to customers whose services are being discontinued, NMSA 1978, § 27-6-17(A)(1) (Repl. Pamp.

---

152. The scheme's claimants would certify that they did not know the names of the other grantees and would publish notice of the partition to "unknown heirs" in English newspapers – even though the other grantees typically were Spanish speaking. *Id.* at 156. 254. The court would then order sale of the land, although most of the grantees had no notice and had not participated in the legal proceedings. *Id.* at 156. The sales would be attended by one or a few bidders, usually representatives of the speculators, who would pay substantially less for the land than it was worth. *See, e.g., id.* at 154. The New Mexico Supreme Court ended these practices in *Priest v. Bd. of Trustees of Las Vegas*, 16 N.M. 692, 698-99, 120 P. 894, 896 (1911) (where real owner may be served by name, owner's property cannot be taken by publication of notice to "unknown claimants"), *aff'd*, 232 U.S. 604 (1914) and *Rodriguez v. La Cueva Ranch Co.*, 17 N.M. 246, 257-58, 134 P. 228, 231-32 (1912) (when parties to partition proceeding have actual knowledge of or means of obtaining identity of adverse claimants, proceedings against adverse claimants as "unknown owners" are a nullity).

1995), and liquor license holders must post warnings in English and Spanish that drinking alcohol while pregnant may cause birth defects, NMSA 1978, § 60-6A-30 (Repl. Pamp. 1994).

New Mexico has a Spanish language state song, a Spanish language salute to the flag, and a state poem written in Spanish and translated into English. NMSA 1978, §§ 12-3-6, 12-3-7 (Repl. Pamp. 1988), 12-3-11 (Cum. Supp. 1996). The legislature has called the flag *"el símbolo zia de amistad perfecta, entre culturas unidas."*[12] NMSA 1978, § 12-3-7 (Repl. Pamp. 1988).

During the 1987 legislative session, a resolution proposing an amendment to the constitution to make English the official language of the state was introduced. H.J. Res. 7, 38th N.M. Legis., 1st Sess. (1987). The proposed resolution was never voted out of committee. In 1989, the legislature adopted a memorial affirming that

> the people of New Mexico promote the spirit of diversity-with-harmony represented by the various cultures that make up the fabric of our state and American society . . . .

H.J. Mem. 16, "Supporting Language Rights in America," 39th N.M. Legis., 1st Sess. (1989). The memorial affirmed the importance of learning English, supported the "preservation of the cultures and languages," and encouraged proficiency in English and other languages. *Id.*

---

12 "[T]he Zia symbol of perfect friendship between united cultures." NMSA 1978, § 12-3-3 (Repl. Pamp. 1988). The Zia is the symbol on New Mexico's flag and is taken from an ancient sun design from the Zia Pueblo. Office of the New Mexico Secretary of State, *New Mexico Blue Book 1995-96*, at 38 (1995).

3. New Mexico state government regularly "speaks" languages other than English during the course of business

The present day state government of New Mexico conducts business in languages other than English under all sorts of circumstances. The Attorney General and his Office, for example, use other languages daily. The Attorney General receives many calls from constituents who speak Spanish. The Attorney General's staff speaks in Spanish to all constituents who prefer to communicate in Spanish.[13]

Spanish language television stations ask the Attorney General's Office to discuss important public issues. Representatives from the Office speak Spanish directly because it is the more effective way to communicate with the public.

The Consumer Division of the Office of the Attorney General receives complaints daily from consumers who speak Spanish. To facilitate accepting and responding to these complaints, the division employs three advocates who speak Spanish fluently. The Attorney General's Consumer Alert Line, which receives thousands of inquiries and complaints annually, is available to Spanish speakers. To assist consumers from the Navajo Nation, who are

---

[13] Prohibiting the Attorney General from expressing his views to his constituents and to the electorate in the manner and language of his choice would strike at the core of the Attorney General's First Amendment right of free speech. *Brown v. Hartlage*, 456 U.S. 45, 53-54 (1982); *Bond v. Floyd*, 385 U.S. 116, 135-36 (1966).

victims of fraud in disproportionate numbers, the division is developing a consumer education program in Navajo.

Recently, the Consumer Division investigated a fraudulent long distance telephone carrier scheme in which the carrier improperly recruited new customers. The carrier, which generally charges higher rates than other carriers, targeted hundreds of Vietnamese and Spanish speaking individuals in New Mexico. To gather information from the victims, the Attorney General's Office hired a Vietnamese interpreter and used Spanish speaking employees to translate.

The Attorney General's Office recently investigated a complaint of election fraud in which four or five Mexican national hotel maids were used to falsify thousands of signatures on nominating petitions. Some of the women spoke little or no English; Spanish speaking investigators interviewed the women to obtain information about the fraud.[14]

The Attorney General participates annually in an international border conference with state attorneys general from Mexico and the United States (including the Attorney General of Arizona) to discuss common border problems. The conferences are bilingual; the proclamation

---

[14] Whether this example would fall within Article 28's exception allowing the use of a language other than English to protect the rights of criminal defendants and victims of a crime is not clear. See Ariz. Const. art. XXVIII, § 3(2)(e). The parameters of the exceptions to Article 28 would generate a spate of litigation.

issued and signed at the end of each conference is written in English and Spanish.

Examples from other state agencies abound. The Secretary of State's Office, which oversees elections, NMSA 1978, §§ 1-2-1 to 1-2-2 (Repl. Pamp. 1995), provides a multitude of election materials to voters in Spanish and Native American languages. Secretary of State employees provide election information by telephone and in person in Spanish and Native American languages.

The Human Rights Division, which oversees employment discrimination complaints, NMSA 1978, § 28-1-4(B) (Repl. Pamp. 1996), employs intake officers who accept complaints and interview complainants in Spanish. Hearings before the Human Rights Commission are translated, at Commission expense, from Spanish to English when a party or witness is Spanish speaking. On occasion, Spanish speaking members of the Commission question witnesses in Spanish because it is a more effective way to communicate (and an English translation follows).

The New Mexico State Library has staff regularly available to assist Spanish speaking patrons. Under Arizona's English-only provision, even the sign on the library's reception desk, which reads *"Personal en español disponible,"*[15] would be illegal.

Inspectors from the state Livestock Board inspect livestock waiting to be shipped for ownership and brand, and check the bills of sale. NMSA 1978, § 77-2-7(A) (Cum. Supp. 1995). Livestock inspectors routinely interact with

---

[15] Spanish speaking staff available.

livestock owners who speak Spanish and conduct inspections in Spanish (although the certificates of inspection are issued in English). In the Gallup, New Mexico area, near the Navajo reservation, a state livestock inspector speaks Navajo to Navajo ranchers.

The state employees' retirement organization, the Public Employees Retirement Association ("PERA"), NMSA 1978, §§ 10-11-130 to 10-11-131 (Repl. Pamp. 1995), offers counseling on retirement and disability benefits in Spanish. PERA soon will introduce an interactive voice response system that will allow its members to vote via telephone, in English or Spanish, for members of the board which oversees the retirement association.

All of these activities, which are but a few of the countless instances in which languages other than English are used in the course of state government business, would be barred under an English-only regime like Article 28's.

B. New Mexico's Experience with the Use of Spanish and Other Languages Shows That, as a Practical Matter, an English-Only Provision Bears No Relationship to Any Legitimate State Interest

New Mexico has a Spanish and English tradition that continues today. New Mexico law allows for the use of Spanish and other languages and, under certain circumstances, requires the use of Spanish. New Mexico government conducts business in languages other than English in many and varied circumstances. And New Mexico's multilingual population is proportionately larger than

Arizona's. [16] Yet none of the fears on which Article 28 is based has come to pass in New Mexico.[17]

First, New Mexico's protection of other languages, principally Spanish, has not led to a lack of common language in English. Only 4% of the population, a tiny minority of New Mexicans, do not speak English at all or

---

[16] In 1990, 64.5% of New Mexico's population spoke English at home, 27.9% of the population spoke Spanish at home, and 5.7% spoke a Native American language at home. 1990 Census of Population, *Social and Economic Characteristics, New Mexico*, Table 32 (Sept. 1993). Ninety-six percent of the population spoke English only or, if multilingual, spoke English well; 4.0% of the population did not speak English or did not speak it well. *Id.*

In Arizona in 1990, 79.2% of the population spoke English at home, 14.2% spoke Spanish, and 3.3% a Native American language. 1990 Census of Population, *Social and Economic Characteristics, Arizona*, Table 32 (Sept. 1993). Ninety-six and four-tenths percent of the population spoke only English or, if multilingual, spoke English well; only 3.6% did not speak English or did not speak it well. *Id.*

[17] New Mexico, by its example, does not mean to imply that Arizona or any other state should promote or require the use of other languages in the same manner and to the same extent as New Mexico. Nor does New Mexico mean to imply that it has done all that it can or should to provide government access to those not proficient in English.

New Mexico's point is that, by its example, it can demonstrate as a matter of fact, rather than abstract surmise, that protecting the use of languages other than English – and allowing their use as part of government business – does not hamper or interfere with the state interests petitioners claim are at stake.

do not speak it well. In fact, in recent years, the proportion of people who speak English has increased and the proportion of people who do not speak English has decreased, even though a larger proportion of the population is foreign born.[18] New Mexico's experience demonstrates that protection of Spanish and state government's use of languages other than English have not resulted in lack of a common language or in the decline in the use of English; without prohibitions by the government on the use of other languages, use of English is widespread and is becoming more common.

---

[18] In the 1970 census, 53.9% of New Mexico's population identified English as their "mother tongue," while 32.4% of the population identified Spanish as their "mother tongue." 1970 Census of Population, *Detailed Characteristics, New Mexico*, Table 142 (June 1972). Two and two-tenths percent of the population was foreign born. 1970 Census of Population, *General Social and Economic Characteristics, New Mexico*, Table 49 (Dec. 1971).

By the next census, in 1980, the percentage of New Mexico's population that was foreign born increased to 4.0%. 1980 Census of Population, *General Social and Economic Characteristics, New Mexico*, Table 63 (June 1983). Sixty-two and two-tenths percent of the population spoke English at home and 29.6% spoke Spanish at home. *Id.* Ninety-five and six-tenths percent spoke English only or, if multilingual, spoke English well. *Id.* Four and four-tenths percent did not speak English at all or did not speak it well. *Id.*

In 1990, 5.3% of the state's population was foreign born. 1990 Census of Population, *Social and Economic Characteristics, New Mexico*, Table 32 (Sept. 1993). Sixty-four and five-tenths percent of the population spoke English at home, and 27.9% spoke Spanish at home. *Id.* The percentage of people who spoke English only or, if multilingual, spoke English well, increased slightly to 96.0%, and the percentage who did not speak English or did not speak it well decreased to 4.0%. *Id.*

Second, the use of languages other than English in state government plainly makes government more effective and efficient. From solving consumer problems to providing election information to conducting legal proceedings in employment discrimination matters, state government in New Mexico chooses to communicate in languages other than English because such communication enables government to better accomplish its goals. Prohibiting the use of other languages is particularly unreasonable when government can communicate in other languages using existing resources.[19]

Finally, New Mexico enjoys public confidence in state government as well as political unity and stability. Accommodating other languages increases, rather than undermines, public confidence that government is truly responsive and serves its constituents. Many of the laws which require the use of Spanish in addition to English allow Spanish speakers to receive notice of important events in their communities and to participate more easily in elections. These laws promote political cohesion by allowing greater participation in civic life and in the electoral process.

In fact, Hispanics in New Mexico, as a proxy for Spanish speaking persons, have a long and unique history – which continues today – of active involvement and

---

[19] Petitioners cannot seriously question that using languages other than English makes for more efficient and effective government in light of the State of Arizona's acknowledgement that this is the case. Yniguez Opp. to Cert. Pet., App. at 8 (Stmnt. of Stip. Facts, ¶¶ 15-17).

leadership in political affairs.[20] Presently, of the one hundred and twelve members in the 1995-96 New Mexico legislature, forty are Hispanics, six are Native Americans and two are African Americans. *New Mexico Blue Book, supra*, at 98.[21]

New Mexico does not suffer from the political divisiveness that petitioners fear arises from the use of languages other than English:

---

[20] *See* Maurilio E. Vigil, *The Hispanics of New Mexico: Essays on History and Culture* 21 (1985) (New Mexico has historically been distinguished as a state where Hispanics were quite active in political affairs and where Hispanic office holders were commonplace); F. Chris Garcia & Rudolf O. de la Garza, *The Chicano Political Experience: Three Perspectives* 93-94 (1977) (Chicanos in New Mexico have long used the electoral process successfully); Meinig, *supra*, at 90 (noting "very high level of political participation" and "capable political leadership" of Hispanics in Northern New Mexico); Maurilio E. Vigil *et al.*, *New Mexico Government and Politics* 10 (1995) (Hispanic population has an active voice and involvement in political affairs which is unique from other southwestern states); Holmes, *supra*, at 19-20 (Spanish Americans in New Mexico historically have had a high level of voting compared to Spanish Americans in Arizona, Texas and Colorado) & 58 (noting high level of Hispanic voting in Albuquerque in 1962 elections); E.B. Fincher, *The Mexican American: Spanish Americans as a Political Factor in New Mexico 1912-1950*, at 122 (1950) (noting high level of Hispanic voting in New Mexico in 1940).

[21] The U.S. Bureau of the Census estimated that, in the 1994 elections, 37.2% of the voting age population (eighteen years and older) in New Mexico was Hispanic, 7.7% Native American, and 1.9% African American. Lynne M. Casper, U.S. Dept. of Commerce, *Projections of the Voting-Age Population, for States: November 1994* (May 1994); Bureau of the Census, U.S. Dept. of Commerce, *State Population Projections, Series A* (Mar. 1994).

Because of the relatively large proportion of distinctive ethnic groups in the state, and because of these cultures' long history in the area, ethnic relations have probably been closer to the model of cultural pluralism than those found in any other part of the country. While there have been hostilities, various instances of discrimination, and some antagonisms between the cultures, by and large New Mexico has as good a record of peaceful relations between ethnic groups as any other state. New Mexico prides itself on its multicultural conditions. Rather than strive toward a "melting pot," in which all cultural distinctions are mixed, the state seeks to maintain a cultural mosaic: each piece separate and distinct, but when placed side by side with other individual pieces, forming an integrated, composite whole.

F. Chris Garcia, *New Mexico: The Setting, in New Mexico Government* 1, 3-4 (footnote omitted) (Paul L. Hain *et al.* eds., 3d ed. 1994); *see also* Nancie L. González, *The Spanish Americans of New Mexico* 194 (2d ed. 1969) (New Mexico "comes closer to the pluralistic dream of society than does any other area in the nation").

Although petitioners believe that Arizona must "protect[ ] itself and [its] society from the divisive effects" of what it calls "official multilingualism," Pet. Brief at 36, New Mexico's experience demonstrates that petitioners have nothing to fear from government's reasonable use of languages other than English. Rather,

> [w]here people of different [linguistic and] cultural legacies exist side by side, they can be knitted into a common national loyalty if their [linguistic and] cultural traditions are treated with respect, so that loyalty to each ethnic group becomes a basis for loyalty to the larger society.

Ithiel de Sola Pool, *Plural Society in the Southwest: A Comparative Perspective, in Plural Society in the Southwest* 321, 328 (Edward H. Spicer & Raymond H. Thompson eds., 1972).

CONCLUSION

The Court should affirm the opinion of the Ninth Circuit Court of Appeals in *Yniguez v. Arizonans for Official English*, 69 F.3d 920.

July 25, 1996

Respectfully submitted,

TOM UDALL
Attorney General
Counsel of Record
MANUEL TIJERINA
Deputy Attorney General
GERALD T.E. GONZALEZ
Director, Civil Division
TANNIS L. FOX
LAURA FASHING
ELIZABETH A. GLENN
WILLIAM S. KELLER
Assistant Attorneys General
Office of the Attorney General
of New Mexico
Bataan Memorial Building
Santa Fe, New Mexico 87503
(505) 827-6000

APPENDIX

The following are pertinent parts of the New Mexico Constitution that promote or require the use of Spanish or prohibit discrimination against Spanish speakers or persons of Spanish descent:

> The right of any citizen of the state to vote, hold office or sit upon juries, shall never be restricted, abridged or impaired on account of religion, race, language or color, or inability to speak, read or write the English or Spanish languages except as may be otherwise provided in this constitution; and the provisions of this section . . . shall never be amended except upon a vote of the people of this state in an election at which at least three-fourths of the electors voting in the whole state, and at least two-thirds of those voting in each county of the state, shall vote for such amendment.

N.M. Const. art. VII, § 3.

> The legislature shall provide for the training of teachers in the normal schools or otherwise so that they may become proficient in both the English and Spanish languages, to qualify them to teach Spanish-speaking pupils and students in the public schools and educational institutions of the state, and shall provide proper means and methods to facilitate the teaching of the English language and other branches of learning to such pupils and students.

Id. art. XII, § 8.

> Children of Spanish descent in the state of New Mexico shall never be denied the right and privilege of admission and attendance in the

> public schools or other public educational institutions of the state, and they shall never be classed in separate schools, but shall forever enjoy perfect equality with other children in all public schools and educational institutions of the state, and the legislature shall provide penalties for the violation of this section. This section shall never be amended except upon a vote of the people of this state, in an election in which at least three-fourths of the electors voting in the whole state and at least two-thirds of those voting in each county in the state shall vote for such amendment.

Id. art. XII, § 10.

> Any amendment or amendments to this constitution may be proposed in either house of the legislature at any regular session thereof. . . .
>
> The secretary of state shall cause any such amendment or amendments to be published in at least one newspaper in every county of the state, where a newspaper is published once each week, for four consecutive weeks, in English and Spanish when newspapers in both of said languages are published in such counties. . . .

Id. art. XIX, § 1.

> For the first twenty years after this constitution goes into effect all laws passed by the legislature shall be published in both the English and Spanish languages and thereafter such publication shall be made as the legislature may provide.

Id. art. XX, § 12.

> The ballots cast at said election in favor of the ratification of this constitution shall have

> printed or written thereon in both English and Spanish the words "For the Constitution"; and those against the ratification of the constitution shall have written or printed thereon in both English and Spanish the words "Against the Constitution"; and shall be counted and returned accordingly.

Id. art. XXII, § 14.

However, the constitution, as originally enacted and as it continues today, provides that:

> Provision shall be made for the establishment and maintenance of a system of public schools which . . . shall always be conducted in English.

Id. art. XXI, § 4.